

## USE OF INTERNATIONAL STANDARDS UNDER THE SPS AGREEMENT

*Submission by the United States*

### Introduction:

1. Signatories to the WTO and the SPS Agreement have recognized the important contribution that international standards, guidelines and recommendations make to the establishment of a multilateral framework of rules and disciplines to guide the development, adoption and enforcement of sanitary and phytosanitary measures. In the SPS Agreement, WTO members committed to further the use of harmonized sanitary and phytosanitary standards, guidelines and recommendations by basing, when appropriate, their national measures on those international instruments and by playing a full part, within the limits of their resources, in relevant international organizations, including the Codex Alimentarius Commission (CAC), the International Office of Epizootics (OIE), and the relevant international and regional organizations operating within the framework of the International Plant Protection Convention (IPPC).

2. WTO membership and membership in the international standards-setting bodies overlaps substantially. The international standards-setting bodies are elaborating a number of concepts which are directly related to certain provisions of the SPS Agreement. The substance of their decisions on these and other issues, and the means by which those decisions are developed and adopted, have significant implications for effective implementation of the SPS Agreement. As part of the triennial review of the Agreement, members should encourage each other to fully and effectively participate in the activities of the international standards-setting activities, in order to ensure effective communication between the SPS Committee and the international standards-setting bodies, and between the various national authorities that represent individual members in these organizations.

### Sovereign Rights and Harmonization:

3. The SPS Agreement clearly affirms a WTO member's rights and authority to adopt and implement regulations to establish the level of sanitary or phytosanitary protection deemed by the member to be appropriate. The Agreement also seeks harmonization of standards among WTO members on as wide a basis as possible by encouraging the use of international standards, guidelines or recommendations. These principles are not incompatible. International harmonization of regulatory requirements offers an opportunity to elevate health and safety regulations, based on scientific principles and risk assessment, to a consistent level of excellence -- for the benefit of consumers and traders world-wide.

4. As a part of the triennial review, WTO members should affirm the right of each member to assess health risks, determine appropriate levels of protection, and institute measures that would achieve those levels of protection, while encouraging members to redouble their efforts, on this basis, to further the use, as appropriate, of harmonized international standards.

Transparency and the Standards Setting Process:

5. The effective operation of the rules-based international trading system depends on public understanding of its role and confidence in its processes. Openness, transparency and the opportunity to provide input help to create this understanding and confidence, and foster more informed discussion of issues relevant to the WTO system. The United States believes that further steps can be taken to improve the transparency of WTO activities. Similarly, the United States will also be working to ensure that all interested parties have access to information on the issues being addressed by international standards-settings bodies, and the relevance of those issues to health, trade and other interests. Given the importance of their activities to the effective implementation of the Agreement, the United States encourages all members to directly participate, to the greatest extent possible, in the work of international standards-setting bodies.

6. In this regard, it is important to note that improved transparency is fully consistent with the principle of ensuring that sanitary and phytosanitary standards, guidelines and recommendations are based on science or, where relevant scientific information is insufficient, on the basis of relevant pertinent information. The purpose of transparency is to ensure accountability and the opportunity to take into consideration all relevant evidence and views. In this respect, the effectiveness of members' efforts to maintain science as the basis for international standards will contribute to the public's confidence in the objectivity and reliability of members' human, animal and plant health regimes (see below).

7. In reviewing the implementation of the provisions of the SPS Agreement relating to the use of international standards, guidelines and recommendations, it is also important to recall members' expectations about the nature of such standards and the way those expectations informed the drafting of the Agreement. It is the understanding of the United States that members expected that the adoption of each international standard, guideline or recommendation by an international body would be the result of broad international agreement with respect to the scientific basis for that instrument. International standards, guidelines or recommendations which do not meet this test are unlikely to advance members' desire to "further the use of harmonized sanitary and phytosanitary measures."

Science as the Basis for Standards:

8. In developing a rules-based trading system which ensures the protection of human, animal and plant health while minimizing the negative effects on trade, members agreed that their sanitary and phytosanitary measures will be based on scientific principles and will not be maintained without sufficient scientific evidence. Article 3 of the SPS Agreement makes clear members' expectation that international standards, guidelines and recommendations will be based on science. This is

consistent with longstanding policy and practice in the CAC, OIE and IPPC.

9. Nevertheless, there have been suggestions in these organizations that policies be altered to allow for the development of health standards which may not be science-based. Such policy changes would threaten the objectivity and reliability of the international standards-setting process, frustrate WTO members' desire to further the use of harmonized standards, and undermine the effective implementation of the SPS Agreement.

10. The principle that national health measures and international SPS standards must be based on science is fundamental to the effective implementation of the SPS Agreement.<sup>1</sup> The Committee should encourage members to ensure that their agreement on this principle is reflected in their participation in the standards-setting organizations, ensuring that international standards, guidelines and recommendations continue to be based on health-related scientific evidence.

Timeliness:

11. The slow pace of progress in setting standards, both nationally and within international standards-setting organizations, is problematic for both consumers and traders. Naturally, due diligence and caution must be exercised in order to avoid potentially costly health and economic outcomes and to ensure broad international agreement. Nevertheless, international standards, guidelines and recommendations can assist countries in elevating their human, animal and plant health standards, and a lack of progress hinders countries from instituting measures which would not only better protect their populations, but also enable them to better meet the requirements of other countries' markets. The negative consequences are particularly severe for developing countries, many of which rely heavily on international standards as a basis for domestic standards and to provide guidance on trade matters.

12. As a part of the triennial review, WTO members should commit to increasing the priority of their participation in the CAC, OIE and IPPC, so as to accelerate the pace of standards-setting and standards-review activities in these bodies, where appropriate.

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<sup>1</sup> When relevant scientific information is insufficient, the Agreement permits members to provisionally adopt sanitary or phytosanitary measures on the basis of available pertinent information.